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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/537,692

06/06/2005

Thomas Becker

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EXAMINER

TORRES, MARCOS L

ART UNIT

PAPER NUMBER

2617

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DELIVERY MODE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/537,692	<b>Applicant(s)</b> BECKER ET AL.	
	<b>Examiner</b> MARCOS L. TORRES	<b>Art Unit</b> 2617	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 April 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 42-82 is/are pending in the application.
- 4a) Of the above claim(s) 56-68 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 42-55 and 69-82 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on 06 June 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>10-19-05</u>  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Claims 56-68 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 4-3-08.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 42 and 69 are rejected under 35 U.S.C. 112, first paragraph, as based on a disclosure which is not enabling. The step of creating a session is critical or essential to the practice of the invention, but not included in the claim(s) is not enabled by the disclosure. See *In re Mayhew*, 527 F.2d 1229, 188 USPQ 356 (CCPA 1976). The claims disclose to establish traffic channel connection and transmitting during a session and ending the session, however the claim never recited that a session was created in the first place. In order to transmit during a session and ending the session, a session must be created at some point. Please indicate when the session is being created.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claims 42-55 and 69-82 rejected under 35 U.S.C. 103(a) as being unpatentable over Sivula 20010053687 in view of Boyle 6138158.

As to claim 42, Sivula discloses a method for delivering a multimedia message to a telecommunication device configured as a multimedia message sink, comprising: transmitting the multimedia message to a multimedia message service, configured as a multimedia message source for delivering the multimedia message to the telecommunication device center (see par. 0009); sending, via the multimedia message

service center directly or indirectly, an information message to the telecommunication device, informing the telecommunication device about the stored multimedia message (see par. 0012); establishing, directly or indirectly a traffic channel connection to the telecommunication device according to the information message and transmitting the information message in an information session; terminating the information session upon the transmission of the information message; and keeping the traffic channel connection established to the telecommunication device in the context of a fetching session has retrieved the content of the multimedia message intended for the telecommunication device from the multimedia message service center via the traffic channel connection (see par. 0013,0014). Sivula does not specifically disclose the telecommunication device has analyzed the received information message. In an analogous reference, Boyle discloses the telecommunication device has analyzed the received information message (see col. 15, line 41 - col. 16, line 54). Therefore, it would have been oblivious to one of the ordinary skills in the art at the time of the invention to permit the device to acknowledge the reception of the message before closing the connection for the simple purpose of making sure that the message was received.

As to claims 43 and 70, Sivula discloses a method wherein the multimedia message service center indicates to the telecommunication device in the information session that the traffic channel connection remains established for a specified time which is sufficient for the analysis of the information message and for the duration of the fetching session (see par. 0013, 0014).

As to claims 44 and 71, Sivula discloses a method wherein the signaling with the transmission of the information message takes place with the aid of a special information element of an information element container used for the transmission of the information message or with the aid of a message which is separate from the transmission of the information message (see par. 0034).

As to claims 45 and 72, Sivula discloses a method wherein the telecommunication device indicates to the multimedia message service center in the information session that it wishes the traffic channel connection to remain established for a specified time which is sufficient for the analysis of the information message and for the duration of the fetching session (see par. 0034, 0035, 0039).

As to claims 46 and 73, Sivula discloses everything as explained above except for a method wherein the signaling takes place with the aid of an exchange of messages between the telecommunication device and the multimedia message service center with a query message sent by the telecommunication device and an acknowledge message sent by the multimedia message service center. In an analogous art, Boyle discloses a method wherein the signaling takes place with the aid of an exchange of messages between the telecommunication device and the multimedia message service center with a query message sent by the telecommunication device and an acknowledge message sent by the multimedia message service center (see col. 15, line 41 - col. 16, line 54). Therefore, it would have been oblivious to one of the ordinary skills in the art at the time of the invention to permit

the device to acknowledge the reception of the message before closing the connection for the simple purpose of making sure that the message was received.

As to claims 47 and 74, Sivula discloses a method wherein the established traffic channel connection is cleared down if the telecommunication device does not intend to start a fetching session at the time when the traffic channel connection is established (see par. 0049).

As to claims 48 and 75, Sivula discloses a method wherein the information message is inserted into a short message configured as a short message service message, the short message being sent by order of the multimedia message service center from a short message service center to the telecommunication device (see par. 0013, 0014, 0056).

As to claims 49 and 76, Sivula discloses a method wherein the information message is inserted into a wireless application protocol push message and the wireless application protocol push message is inserted into a short message configured as a short message service message, the short message being sent by order of the multimedia message service center from a short message service center to the telecommunication device (see par. 0013, 0014).

As to claim 50, Sivula discloses a method according to claim 48, wherein the short message service center is instructed by the multimedia message service center when the information message is sent by the multimedia message service center to the short message service center (see par. 0013, 0014, 0056).

As to claim 53 and 79, Sivula discloses a method wherein the information session is carried out according to a modem protocol (see par. 0036, 0047).

As to claim 54 and 80, Sivula discloses a method wherein the fetching session is carried out according to a TCP/IP protocol (see par. 0055), a WSP protocol or a modem protocol (see par. 0047).

As to claims 55 and 82, Sivula discloses a method wherein audio, video and/or text data are transmitted with the multimedia message (see par. 0004, 0011).

As to claim 69, Sivula discloses a telecommunication device [b subscriber] for accessing multimedia messages stored in a storage location of a multimedia message service center, comprising: a central control device for controlling the operating and function sequences in the telecommunication device (see par. 0009); a fetching device for retrieving messages and/or information, said device being connected to the central control device; a transmitter/receiver which receives an information message transmitted directly or indirectly by the multimedia message service center to the telecommunication device, and which is connected to the central control device, and which forwards the information message to the central control device in order to inform the telecommunication device about a multimedia message stored in the multimedia message service center for the said telecommunication device, wherein the transmitter/receiver for receiving the information message transmitted by the multimedia message service center in an information session is connected directly or indirectly to the multimedia message service center over a traffic channel connection established by the multimedia message service center (see par. 0009-0011); and upon the



transmission of the information message the information session is terminated; analysis means assigned to the central control device which is configured so that the information message received by the transmitter/receiver via the traffic channel connection and forwarded to the central control device is analyzed (see par. 0011-0014), wherein the fetching device and the central control device together with the assigned means of analysis form a function unit which is configured so that the traffic channel connection established to the telecommunication device remains established at least until the transmitter/receiver has received information message, and the central control device has retrieved the content of the multimedia message intended for the telecommunication device from the multimedia message service center via the traffic channel connection in the context of a fetching session via the fetching device in accordance with the analyzed information message (see par. 0013,0014). Sivula does not specifically disclose the telecommunication device has analyzed the received information message. In an analogous reference, Boyle discloses the telecommunication device has analyzed the received information message (see col. 15, line 41 - col. 16, line 54). Therefore, it would have been obvious to one of the ordinary skills in the art at the time of the invention to permit the device to acknowledge the reception of the message before closing the connection for the simple purpose of making sure that the message was received.

As to claim 81, Sivula discloses a telecommunication device according to claim 69, wherein the telecommunication device is a mobile-radio device, in particular a cordless mobile handset (see par. 0047).

As to claims 51-52 and 77-78, Sivula and Boyle disclose everything as explained above except for the method wherein the information message is transmitted with the aid of in-band signaling such as FSK transmission or DTMF transmission. However, OFFICIAL NOTICE IS TAKEN THAT the use transmitting with the aid of in-band signaling such as FSK transmission or DTMF transmission is a common and well known technique. Therefore, it would have been obvious to one of the ordinary skills in the art at the time of the invention to use these common and available transmission techniques for compatibility and bandwidth management.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MARCOS L. TORRES whose telephone number is (571)272-7926. The examiner can normally be reached on 9:30 am - 6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, George Eng can be reached on 571-252-7495. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/George Eng/  
Supervisory Patent Examiner, Art Unit 2617

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Examiner, Art Unit 2617